



JAMES A. NOYES, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

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May 27, 2004

IN REPLY PLEASE  
REFER TO FILE: PD-1

TO: Each Supervisor

FROM: James A. Noyes  
Director of Public Works

### **ALAMEDA CORRIDOR EAST (ACE) PROJECT APRIL 26, 2004, MEETING**

On April 26, 2004, a member of my staff attended the regular meeting of the San Gabriel Valley Council of Governments-ACE Construction Authority. A copy of the agenda and the adopted minutes of the March 22, 2004, meeting is attached. The following items occurred at the meeting, which are of interest to the County.

Under Agenda Item VII, the ACE Construction Authority Board revised its bid protest policy by approving the amendments to the ACE Construction Authority's Procurement Manual. This action was taken as a result of the bid protest filed in November 2003 by Brutoco Engineering, Inc., a general contractor competing for the Reservoir Street/East End Avenue Grade Separations contract. ACE's independent hearing officer denied Brutoco's protest. A Superior Court decision concluded in March 2004 that ACE is not entitled to delegate bid protest decisions on bid responsiveness to any third party. The revised bid protest procedure reflects the Court's ruling.

Under Agenda Item VIII, the ACE Construction Authority Board approved the attached recommendations by ACE staff, with some changes, concerning ACE positions on pending State transportation legislation. The changes to the staff-recommended positions were to recommend inclusion of alternatives to fees proposed in AB 2041 and SB 1397.

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Attach.

cc: Chief Administrative Office  
Executive Office



# Alameda Corridor-East Construction Authority

4900 Rivergrade Rd. Ste A120 Irwindale, CA 91706 (626) 962-9292 fax (626) 962-3552 www.theaceproject.org

## REGULAR MEETING AGENDA Monday, April 26, 2004 2 P.M. Irwindale City Hall - Council Chambers 5050 Irwindale Avenue Irwindale, CA 91706

Members of the public may comment on any item on the agenda at the time it is taken up by the Board. We ask that members of the public come forward to be recognized by the Chair and keep their remarks brief. If several persons wish to address the Board on a single item, the Chair may impose a three-minute time limit on individual remarks at the beginning of discussion.

All items set forth on this agenda are subject to action.

- I. Roll Call and Introductions
- II. Approval of Minutes - Regular Meeting of March 22, 2004 and Special Meeting of March 29, 2004 (Pages 1-8) Action
- III. Public Comment
- IV. Chairman's Remarks Information
- V. Chief Executive Officer's Report (Pages 9-16) Information
- VI. Quarterly Report on Nogales Environmental Mitigation Monitoring Plan (Pages 17-19) Information
- VII. Approval of Revised Bid Protest Policy (Pages 20-26) Action
- VIII. Approval of Position on State Legislation (Pages 27-29) Action
- IX. Quarterly Report (Pages 30-47) Information
- X. Closed Session: The Board will recess to closed session for:
  - 1. Conference with legal counsel in accordance with Government Code Section 54956.9  
Existing litigation: Grachik Shakhpazyan, et al vs. ACE Construction Authority Possible Action
  - 2. Conference with real property negotiators in accordance with Government Code Section 54956.8 Possible Action
    - Property Address: 11104-1110 Ramona Blvd., El Monte
    - Agency Negotiators: Mark Mendoza, Paragon Partners/Joe Montes, Burke, Williams & Sorensen, LLP
    - Negotiating Parties: ACE Construction Authority and the Fein Family Trust
    - Matters under negotiation: Price and terms

The ACE Construction Authority is currently constituted of seven (7) member jurisdictions: the City of El Monte, the City of Industry, the City of Montebello, the City of San Gabriel, the City of Pomona, the County of Los Angeles, and the San Gabriel Valley Council of Governments. A San Bernardino County Council of Governments representative is an ex officio Board member.

Each member or alternate has one vote. A quorum of the ACE Construction Authority is no less than four (4) of its total voting membership. Actions taken by the ACE Construction Authority shall be by simple majority of the members present with a quorum in attendance except for personnel actions, the annual budget, matters dealing with the Administrative Code or matters requiring subsequent approval by the SGVCOG, all of which shall require five (5) votes.

ACE Construction Authority  
April 26, 2004 Meeting  
Agenda

- Property Address: 11126 Ramona Blvd, El Monte  
Agency Negotiators: Mark Mendoza, Paragon Partners/Joe Montes, Burke, Williams & Sorensen, LLP  
Negotiating Parties: ACE Construction Authority and City of El Monte  
Matters under negotiation: Price and Terms

Possible  
Action

XI. Adjournment

Action



**ACE Construction Authority  
Regular Board Meeting  
March 22, 2004  
Minutes**

Chairman Harry Baldwin called the meeting to order at the Irwindale Council Chambers on March 22, 2004 at 2:00 PM.

**1. In attendance were:**

Harry Baldwin, San Gabriel, Chair  
Michael Antonovich, County of Los Angeles  
Jack Phillips, Industry  
Ernest Gutierrez, El Monte  
Ed Vasquez, Montebello  
Ed Cortez, Pomona  
Bob Huff, SGVCOG, Diamond Bar  
Paul Eaton, Ex Officio, SANBAG

**Staff**

Rick Richmond, Chief Executive Officer  
Joe Silvey, Legal Counsel  
Sharon Neely, staff  
Deanna Stanley, staff  
Cynthia Ambrose, staff  
Bruce Armistead, staff  
Girish Roy, staff

**Guests**

Rose Anderson, Congressman Gary Miller  
John Krikorian, Business Life Magazine  
Rob Van Riel, Senator Nell Soto  
Greg Jaquez, LA Co. DPW

**2. Approval of minutes of meeting of February 23, 2004**

A motion was made to approve the meeting minutes.

M/S/C: Cortez/Gutierrez/Unanimous

**3. Public Comments**

There were no public comments.

**4. Chairman's Remarks**

Chairman Baldwin congratulated Board Member Bob Huff on the recent election efforts as state assemblyman and wished him well in the election in November.

Chairman Baldwin indicated item #9 on the agenda was being pulled and carried

over to a Special Board meeting on March 29<sup>th</sup> at 2 PM.

Chairman Baldwin reported that a legislative dinner was being planned for May 12 in Sacramento co-hosted by the San Gabriel Valley COG, Foothill Transit and Gold Line Foothill Extension Construction Authority. He asked members interested in attending to let Rick Richmond know.

Chairman Baldwin summarized the successful federal official meetings and accomplishments while in Washington, DC.

#### **5. Chief Executive Officer's Report**

Mr. Richmond indicated that the Special Meeting was for a hearing for Brutoco Engineering to present its protest of the construction contract award of the East End/Reservoir grade separations. He indicated the Board was provided a copy of the Brutoco protest, staff's response and names of the teams for review for conflict of interest. He reported that the bidders were asked to confirm whether they would hold their bid amounts with a deadline for response of March 24<sup>th</sup>. He also indicated any other information pertinent to the bid protest was due from the bidders on that date and would be provided to the Board prior to the meeting.

Mr. Richmond indicated a Nogales/Valley construction site visit was scheduled immediately following the April 26 Board meeting and SGVCOG Board members were also invited.

Bruce Armistead reviewed construction progress photos of the Nogales Street grade separation project. Jim Connolly, Bechtel-Korve Program Manager, provided a summary of the program management activities over the last month.

#### **6. Approval of Plans, Specifications and Estimates for the Construction Contract for Ramona Blvd. Grade Separation**

Girish Roy reported the design work for the project was complete and reviewed the plans, specifications and estimates for the Ramona Blvd. grade separation project. He reviewed the scope of work, which included an underpass roadway, retaining walls and a new pump station. He anticipated bid release date in April 2004 for a contract award in June. A motion was made to approve the plans and specifications and estimates for the construction of the Ramona Blvd. grade separation and authorize staff to solicit bids for the project.

M/S/C: Gutierrez/Vasquez/Unanimous

#### **7. Approval of Contract Amendment for Design Services During Construction for Ramona Blvd. Grade Separation with DMJM+Harris**

Rick Richmond reminded the Board that DMJM+Harris were the designers of the Ramona Blvd. grade separation and during the bidding and construction phase support from the designer is required to respond to contractor questions. He reviewed the scope of work and indicated any work would require approval from ACE and the authorization was an estimate. A motion was made to authorize the CEO to amend the contract with DMJM+Harris to add \$440,000 for design services during construction of the Ramona Blvd. grade separation for a new contract value of \$3,001,623 and extend the completion date through July 2006. M/S/C: Gutierrez/Cortez/Unanimous

**8. Approval of Construction Management Services for Ramona Blvd. Grade Separation with Lim and Nascimento Engineering Corporation**

Mr. Richmond reported that the Board-approved Lim and Nascimento contract allowed construction management services task orders of up to four grade separations but that each task would be negotiated separately. He indicated LAN were the construction managers at the Nogales Street grade separation project and reviewed the scope of services proposed for this project. A motion was made to authorize the Chief Executive Officer to execute task order #2 for construction management services of the Ramona Blvd. grade separation in an estimated amount of \$3,255,000. M/S/C: Gutierrez/Cortez/Unanimous

**9. State Legislative Update**

Sharon Neely reviewed pending transportation legislation of interest to the Authority as summarized on page 18-19 of the agenda. She indicated that the SGVCOG Governing Board would also review these bills at their April Board meeting.

**10. Closed Session**

The Board adjourned to Closed Session for Conference with Real Property Negotiators in accordance with Government Code Section 54956.8 to discuss property at the following locations:

- 1601 W. Mission Blvd. City of Pomona (Case No. BC292544)
- 11240 Ramona Blvd., City of El Monte
- 155 S. Reservoir St., City of Pomona (Case No. BC294364)

The Board returned from Closed Session and Legal Counsel reported that no announcements were necessary.

**11. Adjournment**

The meeting was adjourned at 3:27 PM.



**ACE Construction Authority  
Special Board Meeting  
March 29, 2004  
Minutes**

Chairman Harry Baldwin called the meeting to order at the Irwindale Council Chambers on March 29, 2004 at 2:00 PM.

**1. In attendance were:**

Harry Baldwin, San Gabriel, Chair  
Michael Antonovich, County of Los Angeles  
Jack Phillips, Industry  
Ernest Gutierrez, El Monte  
Ed Vasquez, Montebello  
Ed Cortez, Pomona  
Mike Miller, SGVCOG, West Covina  
Paul Eaton, Ex Officio, SANBAG

**Staff**

Rick Richmond, Chief Executive Officer  
Joe Silvey, Legal Counsel  
Larry Lubka, Legal Counsel  
Sharon Neely, staff  
Deanna Stanley, staff  
Cynthia Ambrose, staff  
Bruce Armistead, staff  
Girish Roy, staff

**Guests**

Pat Padilla, Padilla & Associates  
Cecelia Cardenas, Padilla & Associates  
Leroy M. Gire, Attorney at Law  
Paul Mahoney, Jones, Mahoney, Brayton & Soll, LLP  
Paul Von Berg, Brutoco Engineering  
Patrick Ortiz, Ortiz Enterprises, Inc.

**2. Public Comments**

There were no public comments.

**3. Hearing on Protest by Brutoco Engineering & Construction to ACE Staff  
Determination of Responsiveness of Bids from Ortiz Enterprises, Inc.  
and Steven P. Rados in Connection with East End/Reservoir Grade  
Separations Construction Contracts**

Chairman Baldwin opened the hearing. He noted that the Board had previously received the material that has been provided by all interested parties. In

addition, he noted that there was at each Board place, a late submission from Mr. Gire on behalf of Ortiz that came in Friday.

Mr. Paul Mahoney, Legal Counsel for Brutoco Engineering addressed the Board. He described the basis of Brutoco's protest and argued that ACE's DBE Good Faith Effort evaluation process was incorrect. He requested a rebid of the contract. Mr. Mahoney disagreed with the DBE Good Faith Effort evaluation scoring of both Rados and Ortiz. Mr. Mahoney indicated that both firms did not attend an outreach "picnic" sponsored by ACE on September 3, 2003 yet were awarded 5 points for the meeting attendance category of the evaluation. He indicated Brutoco also received five points for the meeting attendance category of the evaluation. He stated that giving five points to all three firms for meeting attendance when Brutoco attended the "picnic" and the other two bidders did not attend was incorrect. He indicated that awarding Ortiz five points for the meeting attendance category pushed them over the pass-fail points for meeting the Good Faith Efforts requirements. He argued that both Ortiz and Rados did not meet DBE good faith requirements and should be deemed non-responsive. He stated that Brutoco met the DBE good faith efforts. Mr. Mahoney further described Brutoco's disagreement with ACE's protest procedures and cited the Court's ruling in favor of Brutoco. He suggested the bid protest process was unfair and he asked that the contract be re-bid.

Mr. Leroy Gire, representing Ortiz Enterprises addressed the Board. He identified Ortiz as the lowest responsive bidder and stated that the Court did not find fault with ACE's DBE determination but rather directed that for this bid protest there should be a hearing before the Board. Further, Mr. Gire indicated that both Ortiz and Brutoco included the same number of DBE firms in their bids. He challenged Brutoco's statement of G&C Equipment being included with their original bid package when the judge found no evidence of submission of G&C until 4 days after bids were due. He further challenged Brutoco's "misrepresentation" of the judge's ruling in favor of Brutoco "in every respect" when the judge's rule was only against the process of the protest policy.

Mr. Pat Ortiz, President of Ortiz Enterprises addressed the Board. He stated his firm was anxious to work with ACE and has been patient with the process, holding its original bid amount for four months. He further indicated his strong disagreement with Brutoco's claim that it included G&C Equipment with its original bid documents and he argued that the Court had found otherwise. He expressed his belief that the bid from his firm complied with all aspects of ACE's contract requirements and he urged Board consideration of a contract award to his firm.

Rick Richmond reviewed a chart summarizing the bid submission figures and DBE subcontracting percentages. He indicated that none of the bids met the established 13% DBE goal; and therefore, a DBE Good Faith Efforts evaluation was conducted in



accordance with federal guidelines. He reviewed ACE's DBE process and Good Faith Effort requirements. He noted that Brutoco did not comply with the requirements with their original submission and noted that G & C Equipment was not included in Brutoco's original bid submission. He presented the Board with correspondence related to the DBE networking "picnic" which stated that while prime contractors were encouraged to attend, but that the networking opportunity for primes and subs was not mandatory. He reviewed the formula used for evaluation of Good Faith Efforts and reminded the Board that each contract award has a federal requirement for Good Faith Effort if DBE goals are not met. He indicated that the main point is whether the low bidder met the DBE Good Faith Effort. It is a pass-fail test, not who received the most points. He indicated that Ortiz Enterprises met the requirements. Lastly, Mr. Richmond indicated that in the Nogales Street Grade Separation construction contract procurement, the low bidder failed to meet the Good Faith Effort requirement and the contract was then awarded to the second lowest bidder, which was Brutoco Engineering.

Mr. Mahoney spoke again and indicated that the Court's final ruling was very narrow and that he did not agree with Mr. Gire's interpretation of the Court's ruling. He indicated that Ortiz should not have been given 5 points for meeting attendance since it did not send anyone to the "picnic". He further stated that G & C Equipment was a DBE and that not awarding the contract to Brutoco would result in \$1.4 million not going to a DBE contractor.

Chairman Baldwin asked for Board questions and comments. He then asked for clarification of his understanding that meeting a DBE Good Faith Effort requirement were either a pass or fail. Mr. Mahoney responded that Ortiz Enterprises would not have passed the requirement if they had not been given five points for "meeting attendance".

Member Cortez asked if ACE had ever had an occasion to find a bidder non-responsive in the past. Mr. Richmond reminded the Board of the Nogales Street Grade Separation construction procurement discussed earlier. He noted that the low bidder was disallowed on Nogales for not meeting the DBE Good Faith Effort requirement and the contract was awarded to Brutoco. He also indicated that the Authority had not received timely DBE information from Brutoco or the details of what G & C Equipment would provide Brutoco in their documents. He further reported that G & C Equipment is not a supplier but rather a broker thus the \$1.4 million referenced by Mr. Mahoney would not be going exclusively to G & C Equipment but rather distributed amongst its vendors.

Member Miller asked staff if the Authority has always used the DBE Good Faith Effort requirements and Mr. Richmond indicated it was a federal requirement. The requirements were published in the bid documents. Mr. Miller queried why Brutoco

should be awarded the contract. Mr. Mahoney responded that the five points for "meeting attendance" should be thrown out for Ortiz and therefore they would not meet DBE Good Faith Efforts requirement and their bid disallowed.

Mr. Richmond again reported the meeting, Mr. Mahoney referred to as a "picnic" was not a picnic, but a networking opportunity and it was not a mandatory meeting.

Mr. Gire indicated that the Court specifically refers to the facts that were established and that G & C documents were not submitted in a timely manner. He also stated his client's understanding that the "picnic" was not a mandatory meeting but rather a networking opportunity.

Member Gutierrez asked staff if Brutoco has used G & C Equipment in past submissions and Mr. Richmond indicated they were a part of the Nogales Street bid submission. Mr. Richmond reminded the Board that the Court did not take issue with the procedures of the Good Faith Efforts but did not agree with the protest procedures which was the purpose of today's meeting.

Member Cortez clarified that the networking meeting referred to as a "picnic" by Mr. Mahoney was not mandatory. Mr. Cortez asked whether there were any financial implications regarding the timing of the contract award. Mr. Richmond indicated the state funding allocated for the project could be in jeopardy should the contract award continue to be delayed. Member Cortez noted the need for timely resolution of this matter.

Member Vasquez requested clarification on whether G & C Equipment was a DBE firm. Mr. Richmond clarified that the firm is a DBE firm; however, they were not included in original bid and a Good Faith Effort evaluation process was used since none of the firms met the established 13% DBE Goal.

A motion was made to deny the protest from Brutoco Engineering concerning the responsiveness of bids from Ortiz and Rados.

M/S/C: Cortez/Gutierrez/Unanimous (Antonovich: Abstained)

#### **4. Award of East End/Reservoir Grade Separation Construction Contract to Lowest Responsible and Responsive Bidder**

Member Cortez made a motion to award the East End/Reservoir Grade Separation Construction Contract to Ortiz Enterprises in the amount of \$30,208,600.

M/S/C: Cortez/Miller/Unanimous (Antonovich: Abstained)

#### **5. Adjournment**

A motion was made to adjourn the meeting at 3:00 PM.  
M/S/C: Cortez/Miller/Unanimous